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Arizona Corporation Commission

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AZ CORP COMMISSION
DOCKET CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

6 IN THE MATTER OF THE APPLICATION
7 OF TRUXTON CANYON WATER
8 COMPANY, INC. FOR APPROVAL OF A
RATE INCREASE.

DOCKET NO. W-02168A-11-0363

9 IN THE MATTER OF THE APPLICATION
10 OF TRUXTON CANYON WATER
11 COMPANY, INC. FOR APPROVAL OF A
12 REVISION OF THE COMPANY'S
EXISTING TERMS AND CONDITIONS OF
WATER SERVICE.

DOCKET NO. W-02168A-13-0309

13 IN THE MATTER OF THE APPLICATION
14 OF TRUXTON CANYON WATER
15 COMPANY, INC. FOR AUTHORITY TO
INCUR LONG-TERM DEBT.

DOCKET NO. W-02168A-13-0332

**VVPOA RESPONSE TO
TRUXTON APPLICATION TO
AMEND DECISION NO. 74835**

16 Valle Vista Property Owners Association ("VVPOA") hereby submits this
17 response to Truxton Canyon Water Company's ("Truxton" or "Company") Application to
18 Amend Decision No. 74835 ("Application"). For reasons more fully detailed below,
19 VVPOA strongly objects to Truxton's Application.

DISCUSSION

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21 In what has become an all-too familiar scenario with Truxton, water customers
22 continue to suffer because the Company simply refuses to comply with a Commission
23 order. Despite its claim that the Company has worked with Staff to resolve issues to
24 enable the construction of improvements related to arsenic treatment, Truxton's continued
25 refusal to comply with Decision No. 74835 for nearly one year since first issued on
26 November 14, 2014 is the genesis of the Company need for more time to complete

1 construction of arsenic treatment facilities to provide customers safe drinking water. A
2 chronology of events demonstrating the Company's refusal to comply with Decision No.
3 74835 is as follows:

- 4 • On December 29, 2014, the Company entered with a Bill of Sale transferring
5 certain Trust water assets. However, the Bill of Sale did not contain the
6 warehouse that was designated to house the arsenic treatment facilities, as
7 specifically required by Decision No. 74835. Nor did the Company's filing
8 indicate that there was a transfer of any real property interests (i.e. easements)
9 required to give Truxton access to water facilities over land owned by the Trust.
- 10 • On June 9, 2015, the Company filed a Supplemental Compliance Report indicating
11 that it first became aware of Staff's position regarding the need to transfer real
12 property interests, as a condition of approval pursuant to Decision No. 74835, until
13 April 24, 2015. Despite "repeatedly" stating that it saw no problem in the Trust
14 granting easements to Truxton, the Company nevertheless argues why Staff's
15 interpretation is incorrect, and that it would take time and expense to accomplish
16 such transfer. More tellingly, by this time the Company still had made no attempt
17 to begin the work of identifying required easements nearly 6 weeks after first being
18 made aware that easements were included in the water system assets the
19 Commission required be transferred to Truxton. As for the warehouse and Staff's
20 enforcement of the requirement in Decision No. 74835 to transfer such warehouse
21 to Truxton, the Company simply stated that the "Trust is no longer willing to allow
22 the arsenic treatment plant in the warehouse. A separate enclosure, if needed, will
23 be sited and constructed elsewhere." In short, it is the Trust – not the Commission
24 – that will dictate what is in the public interest.
- 25 • Only July 24, 2015, Staff filed its Response to Truxton's Supplemental
26 Compliance Report. In addition to finding the Company out of compliance with
several other conditions contained in Decision No. 74835, Staff confirmed that the
Order required the transfer of real property interests (legal right to access), and that
the warehouse housing the chlorination plant, and the future arsenic treatment
facility, was to be transferred from the Trust to Truxton. Staff concluded that until
the matters were resolved – matters fully within the control of the Company – that
the subject financing cannot be completed.

24 It has been approximately nine (9) weeks since Staff filed its response to Truxton's
25 June 9, 2015 notice of compliance, and nothing has been done. In its Application, the
26 Company states that "Understandably, the Trust does not want to give away its

1 warehouse.” Again, despite the fact that the Commission has already determined that
2 Truxton – not the Trust – is the proper owner of the warehouse, the Company and its
3 owners simply refuse to recognize the Commission’s authority in this regard. VVPOA
4 asserts that the Trust continues to act in such a manner because the Commission and its
5 Staff has failed to enforce Decision No. 74835 by going the extra step of finding that the
6 Trust is acting as a public service corporation.¹ Until such time that the Commission
7 asserts its jurisdiction over the Trust, VVPOA contends that it will be the Trust, and not
8 the Commission, that directs Truxton what to do.

9 To add insult to injury, the Company’s proposed alternative solution to “giving
10 away” the Trust’s warehouse is to construct a metal building to house the arsenic
11 treatment plant, at a “regrettable” cost of \$100,815, to be eventually paid by ratepayers.
12 If the cost was truly regrettable, then perhaps the construction company that Truxton
13 intends to hire for the construction of the metal building – Blackhawk Developers, LLC –
14 would be willing to donate the facility, since the Manager Qualified Individual is the
15 same Richard Neal who is running the water Company; the same Richard Neal who is
16 running the Trust, and who does not want to transfer the existing warehouse as required
17 by Decision No. 74835. Such blatant self-dealing between the Company and the Trust,
18 and its common ownership, only supports what VVPOA has been arguing all along – that
19 the owners of Truxton have been using the Company to financially benefit the Trust and
20 its beneficiaries for years, at the cost of ratepayers.

21 CONCLUSION

22 The solution to Truxton’s dilemma is simple – transfer the warehouse from the
23 Trust to the Company as required by Decision No. 74835, and begin building the arsenic
24 treatment facilities. The solution to the Commission’s dilemma is also simple – if the

25 ¹ Attempts to find an interim manager have failed, and the Commission should be looking
26 at other avenues to address the situation.

1 Trust does not want to transfer the warehouse, then the Commission should find that it
2 has been, and continues to act, as a public service corporation. By contrast, the solution
3 to VVPOA and its members' problem is not so simple, since it requires meaningful action
4 on the part of Truxton or the Commission to address water quality issues that have been
5 in place for years. VVPOA requests that the Commission deny the Application, and take
6 all immediate steps necessary to protect the Company's ratepayers from further harm. In
7 the alternative, VVPOA requests that if the Commission were to allow the Trust to
8 replace the existing warehouse with a metal building to house the arsenic treatment
9 facilities, that it does so at the Trust's own cost, and not at the cost of existing or future
10 ratepayers.

11 RESPECTFULLY SUBMITTED this 7th day of October, 2015.

12 FENNEMORE CRAIG

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By



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ORIGINAL and 13 copies
of the foregoing was filed
this 7th day of October, 2015,
with:

Docket Control
Arizona Corporation Commission
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2 was hand-delivered/mailed/emailed this
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